



DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT

August 26, 2004

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW Suite 700
Washington, DC 20423-0001

re: Finance Docket No. 33388 (Sub-No. 91) CSX and Norfolk Southern -- Control -- Conrail
(General Oversight)

Dear Secretary Williams:

On August 2, 2004 CSX and Norfolk Southern filed CSX/NS-6, Joint Reply Comments in the fifth round of the Conrail oversight proceeding. Attached to those comments was a "Supplement" filed under seal, in which CSX and Norfolk Southern presented information about certain of their private business activities in Pennsylvania, including consultation, technical support, and in some cases financial support, to businesses using rail service or considering using rail service in Pennsylvania. After discussion between our Washington counsel and counsel for CSX and Norfolk Southern, I was able to see the Highly Confidential version of the Supplement after providing a signed confidentiality undertaking.

In my testimony at the hearing on May 3 2004 before the Board, and in written comments both before and after that hearing, the Commonwealth of Pennsylvania Department of Community and Economic Development ("DCED") has made it clear that Norfolk Southern, and to a lesser extent CSX, have failed to abide by commitments the carriers made to the Commonwealth of Pennsylvania (the "Commonwealth") and the City of Philadelphia (the "City.")

In their Joint Reply Comments and the Supplement, the carriers simply repeat the same argument that they have made all along—that they should be deemed to have carried out the commitments they made to the Commonwealth and the City because the carriers elected to make other, unrelated investments in the Commonwealth, or, in the alternative, that they should be relieved of their commitments because those commitments are no longer in their best interest. This disingenuous argument simply disregards the nature of CSX's and Norfolk Southern's commitments in this matter.

While seeking the approval by the Surface Transportation Board of their proposed joint acquisition and split-up of Conrail, CSX and Norfolk Southern fervently sought the support of the Commonwealth and the City. To induce the Commonwealth and the City to grant this support, CSX and Norfolk Southern made specific written undertakings to them. When the Commonwealth and the City then gave the support that CSX and Norfolk Southern had requested, the commitments of Norfolk Southern and CSX became enforceable obligations under ordinary principles of contract law.

That Norfolk Southern and CSX may have on various occasions found it to be in their own private economic interest to give technical assistance or even provide financial support for such things as new spurs to serve businesses that promise to generate substantial rail revenues is no substitute for

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Norfolk Southern's and CSX's fulfilling their specific, voluntary and binding commitments to assist in supporting the economic development priorities of DCED and the Commonwealth of Pennsylvania.

As I believe the Board will recognize, there is really no point in attempting to achieve a private agreement through hard negotiations with a railroad if the agreement means only that the railroad will do what is in its economic interests in any case, and will not do what it later deems not to be in its economic interests. Such an agreement could only be termed farcical and ephemeral.

The Commonwealth of Pennsylvania provided real support in freely bargained-for exchange for real commitments, and it continues to expect CSX and Norfolk Southern to abide by these commitments.

Very truly yours,

s/ JOHN M. WHITLOCK

John M. Whitlock

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	
NORFOLK SOUTHERN RAILWAY	)	Finance No. 33388 (Sub- No. 91)
COMPANY -- CONTROL AND OPERATING	)	(General Oversight)
LEASES/AGREEMENTS -- CONRAIL INC.	)	
AND CONSOLIDATION RAIL CORPORATION	)	
	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of August, 2004, the undersigned caused a letter dated August 26, 2004 of the Commonwealth of Pennsylvania Acting by and Through its Department of Community and Economic Development to be served on the parties in the above-captioned proceeding, by electronic mail on those parties for whom a valid electronic mail address is listed in the service list for this matter, and by United States Mail, first class postage pre-paid, on the remaining parties:

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